

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:18-cv-114
)	
MICHAEL B. GIBBS,)	
)	
Respondent.)	

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS

Petitioner United States of America, by and through its undersigned counsel, respectfully represents as follows:

1. This Court has jurisdiction over the subject matter of this action and is empowered to issue appropriate process upon application by the United States pursuant to the provisions of 26 U.S.C. §§ 7402 and 7604, and 28 U.S.C. § 1345.

2. On June 15, 2017, under the authority of 26 U.S.C. § 7602, an Internal Revenue Service summons was served upon Respondent Michael B. Gibbs (Respondent). An IRS Revenue Officer served the summons upon Respondent by leaving the summons at the last and usual place of abode of Respondent, as required by 26 U.S.C. § 7603. A copy of the summons is attached as Exhibit A. The Declaration of the IRS Revenue Officer assigned to handle this matter is attached as Exhibit B.

3. The summons required Respondent to appear and give testimony relating to the tax liabilities or for the collection of the tax liabilities of respondent for the periods designated,

and to bring and produce for examination the items set out in Exhibit A to the IRS Office shown on the summons as the place for appearance.

4. Respondent failed to appear at the time and place designated by the summons and failed to produce the required items set out in Exhibit A.

5. The information contained in the documents that were not produced in accordance with the summons is either not in the possession of the Internal Revenue Service, or if in the possession of the Internal Revenue Service, is in a non-retrievable file system and/or is not readily accessible without undue administrative burden and expense.

WHEREFORE, Petitioner United States of America respectfully requests that this Court enter an Order requiring Respondent to appear at a date and hour to be determined by the Court to give testimony and produce the items set out in Exhibit A, or at a date and hour to be designated by the Court to show cause, if any, why Respondent should not be directed by the Court to appear and produce the items set out in Exhibit A and to testify.

John F. Bash
United States Attorney

By: 

Donald D. Priver
Special Assistant
United States Attorney
California Bar. No. 272620
300 E. 8th Street, Suite 601
Austin, TX 78701

Tel. (512) 499-5147
Fax (855) 630-3810

By: 

BROCK E. WHALEN
Special Assistant
United States Attorney
Texas Bar No. 24049316
300 E. 8th Street, Suite 601
Austin, Texas 78701

Tel. (512) 499-5901
Fax (855) 630-3810



Summons

Income Tax Return

In the matter of MICHAEL B GIBBS, 11401 HIDDEN QUAIL DR, AUSTIN, TX 78758-3660

Internal Revenue Service (Identify Division) SMALL BUSINESS/SELF EMPLOYED

Industry/Area (Identify by number or name) Small Business / Self Employed

Periods: See Attachment 1 to Summons Form 6638 for Period Information

The Commissioner of Internal Revenue

To: MICHAEL B GIBBS

At: 11401 HIDDEN QUAIL DR, AUSTIN, TX 78758-3660

You are hereby summoned and required to appear before AMANDA BOWMAN, an Internal Revenue Service (IRS) officer, to give testimony and to bring for examination the following information related to the tax liability of the person identified above for the periods shown:

All documents and records you possess or control about income you received for the years: 2011, 2012, 2013, 2014, 2015 and 2016

These records and documents include, but are not limited to: Forms W-2 (*Wage and Tax Statement*), Forms 1099 for interest and dividend income, employee earnings statements, and records of deposit with banks or other financial institutions.

Also include all other books, records, documents and receipts for income from, but not limited to, the following sources: wages, salaries, tips, fees, commissions, interest, rents, royalties, alimony, state or local tax refunds, annuities, life insurance policies, endowment contracts, pensions, estates, trusts, discharge of indebtedness, distributive shares of partnership income, business income, gains from dealings in property, and any other compensation for services (*including receipt of property other than money*). Include all documents and records about any income you assigned to any other Person or entity.

IRS will use this information to prepare a federal income tax return for the following year(s) when you didn't file a return: 2011, 2012, 2013, 2014, 2015 and 2016

We have attached a blank return to guide you in producing the necessary documents and records.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

12309 N. MOPAC EXPWY- STE 200, MS 5210 AUNW, AUSTIN TX 78758 (512) 339-5329

Place and time for appearance: At 12309 N MOPAC EXPWY- STE 200, MS 5210 AUNW, AUSTIN, TX 78758



on the 26th day of July, 2017 at 3:00 o'clock p m.

Issued under authority of the Internal Revenue Code this 14th day of June, 2017

Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 6638 (Rev.10-2010)
Catalog Number 61828W

AMANDA BOWMAN

Signature of Issuing officer

REVENUE OFFICER

Title

Signature of approving officer (if applicable)

Title

Original -

EXHIBIT

A



Certificate of Service of Summons

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date	6/15/2017	Time	5:10pm
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How

☐

I handed an attested copy of the summons to the person to whom it was directed.

Summons

Was

☒

I left an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any):

Served

Signature

Amanda Bowman

Title

Revenue Officer

I certify that the copy of the summons served contained the required certification.

Signature

Amanda Bowman

Title

Revenue Officer

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Petitioner

v.

MICHAEL B. GIBBS,

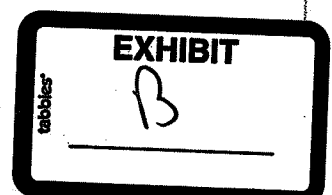
Respondent.

Civil Action No. 1:18-cv-114

DECLARATION

AMANDA BOWMAN declares:

1. I am a duly commissioned revenue officer employed in the Small Business/Self-Employed Division Gulf States Compliance Area of the Internal Revenue Service at 12309 N. MOPAC EXPWY- STE 200, MS 5210 AUNW, AUSTIN, TX 78758.
2. In my capacity as a revenue officer I am conducting an investigation into the tax liability of MICHAEL B. GIBBS for the calendar year(s) ended: 12/31/2011, 12/31/2012 and 12/31/2013.
3. In furtherance of the above investigation and in accordance with Section 7602 of Title 26, U.S.C., I issued on 06/14/2017, an administrative summons, Internal Revenue Service Form 6638, to MICHAEL B. GIBBS, to give testimony and to produce for examination books, papers, records, or other data as described in said summons. The summons is attached to the petition as Exhibit A.
4. In accordance with Section 7603 of Title 26, U.S.C., on 06/15/2017, I served an attested copy of the Internal Revenue Service summons described in Paragraph (3)



above on the respondent, MICHAEL B GIBBS, by leaving a copy at last and usual place of abode, as evidenced in the certificate of service on the reverse side of the summons.

5. On 07/26/2017, the respondent MICHAEL B. GIBBS, did not appear in response to summons. The respondent's refusal to comply with the summons continues to the date of this declaration.

6. The books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

7. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

8. It is necessary to obtain the testimony and to examine the books, papers, records, or other data sought by the summons in order to properly investigate the federal tax liability of MICHAEL B. GIBBS for the calendar year(s) ended 12/31/2011, 12/31/2012 and 12/31/2013.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of January, 2018.

Amanda Bowman

AMANDA BOWMAN, REVENUE OFFICER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:18-cv-114
)	
MICHAEL B. GIBBS,)	
)	
Respondent.)	

ORDER

This matter is before the Court on a Petition to Enforce Internal Revenue Service Summons filed by the United States of America, and upon review of the Petition, the attached exhibits and the Declaration of Amanda Bowman, IRS Revenue Officer, it is this day

ORDERED the Respondent, Michael B. Gibbs, appear at the office of the IRS Revenue Officer assigned to handle this matter, at the Internal Revenue Service, 12309 Mopac Expressway, Austin, Texas 78758, telephone no. (512) 339-5329, on February 27, 2018, at 11:00 a.m., for the purpose of obeying the IRS summons served upon Respondent requiring Respondent to appear and give testimony relating to the tax liabilities or the collection of the tax liabilities of Respondent and to bring with him all the items set out in the summons subject to this action and to testify. In the event Respondent fails to appear before the IRS Revenue Officer

at the time and place set forth above, or fails at such time and place to produce the information and records required by the summons, it is further

ORDERED that Respondent appear before the United States District Court for the Western District of Texas, Austin Division, on the _____ day of _____, 2018, at _____ .m., at the United States Courthouse, 501 West 5th Street, Austin, Texas, Courtroom No. __, and show cause why Respondent should not be held in contempt for failing to appear at the time and place designated in this Order and why Respondent should not be directed to produce the records and documents listed in this Order and to testify.

SIGNED this _____ day of _____.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

at the time and place set forth above, or fails at such time and place to produce the information and records required by the summons, it is further

ORDERED that Respondent appear before the United States District Court for the Western District of Texas, Austin Division, on the _____ day of _____, 2018, at _____ .m., at the United States Courthouse, 501 West 5th Street, Austin, Texas, Courtroom No. __, and show cause why Respondent should not be held in contempt for failing to appear at the time and place designated in this Order and why Respondent should not be directed to produce the records and documents listed in this Order and to testify.

SIGNED this _____ day of _____.

SAM SPARKS
UNITED STATES DISTRICT COURT JUDGE

at the time and place set forth above, or fails at such time and place to produce the information and records required by the summons, it is further

ORDERED that Respondent appear before the United States District Court for the Western District of Texas, Austin Division, on the _____ day of _____, 2018, at _____ .m., at the United States Courthouse, 501 West 5th Street, Austin, Texas, Courtroom No. __, and show cause why Respondent should not be held in contempt for failing to appear at the time and place designated in this Order and why Respondent should not be directed to produce the records and documents listed in this Order and to testify.

SIGNED this _____ day of _____.

HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE

at the time and place set forth above, or fails at such time and place to produce the information and records required by the summons, it is further

ORDERED that Respondent appear before the United States District Court for the Western District of Texas, Austin Division, on the _____ day of _____, 2018, at _____ .m., at the United States Courthouse, 501 West 5th Street, Austin, Texas, Courtroom No. __, and show cause why Respondent should not be held in contempt for failing to appear at the time and place designated in this Order and why Respondent should not be directed to produce the records and documents listed in this Order and to testify.

SIGNED this _____ day of _____.

LEE YEAKEL
UNITED STATES DISTRICT JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Donald Priver, Special Assistant United States Attorney
300 E 8th. St., Suite 601, Austin, TX 78701
Tel: 512-499-5147

DEFENDANTS

Michael B. Gibbs

County of Residence of First Listed Defendant Travis

(IN U.S. PLAINTIFF CASES ONLY)

NOTE:

IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. 7604

Brief description of cause:

Petition to Enforce Internal Revenue Service Summons**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

02/06/2018

/s/ Donald Priver

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**
 Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.